

Government Competition and Privatization Subcommittee

Thursday, October 25, 2007

9:00 a.m.

Room W125 • House Building

ENCLOSURES

PAGE

Notice of Meeting	1
Agenda	3
Minutes of the September 26, 2007, 2007 meeting	7

Local Government Feasability and Economic Impact Studies (Agenda Item #2)	
2008 General Session draft legislation, "Local Government Fiscal and Economic Impact Studies"	9

Consider Legislative Proposals: Proposal to Create a Government Competition and Privatization Act (Agenda Item #3A)

"Working Drafts: General Restructuring Related to Government Competition and Privatization" (Cover Sheet)	17
2008 General Session draft legislation, "Government Competition and Privatization Act"	19
2008 General Session draft legislation, "Charges for Private Use of Public Facilities"	37
2008 General Session draft legislation, "Inventory and Review"	45

Consider Legislative Proposals: Local Government Accounting for Competitive Activities (Agenda Item #3B)

2008 General Session draft legislation, "Accounting for Competitive Activities of Local Entities"	55
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Also Enclosed

"Testimony of James Baller, The Baller Herbst Law Group," presented at the September 26, 2007 meeting	61
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For further information, please contact Leif Elder at 538-1032
Prepared by the Office of Legislative Research and General Counsel



OFFICE OF LEGISLATIVE RESEARCH & GENERAL COUNSEL



MICHAEL E. CHRISTENSEN
Director

M. GAY TAYLOR
General Counsel

Utah State Capitol Complex
House Building, Suite W210
PO Box 145210
Salt Lake City, Utah 84114-5210

(801) 538-1032 • fax 538-1712
<http://le.utah.gov>

NOTICE OF MEETING

GOVERNMENT COMPETITION AND PRIVATIZATION SUBCOMMITTEE

The subcommittee chairs have scheduled the following meeting:

DATE: Thursday, October 25, 2007
TIME: 9:00 a.m. to 3:00 p.m.
PLACE: Room W125 House Building

If subcommittee members would like to be excused from the meeting, they may call Leif Elder or Phalin Flowers at 538-1032.

SUBCOMMITTEE MEMBERS

Sen. Howard A. Stephenson, Senate Chair
Rep. Craig A. Frank, House Chair

Sen. Brent H. Goodfellow
Sen. Wayne L. Niederhauser

Rep. Tim M. Cosgrove
Rep. Carl W. Duckworth

Rep. Kevin S. Garn
Rep. Michael T. Morley
Rep. Mark W. Walker

STAFF

Leif G. Elder
Research Analyst

Patricia Owen
Associate General Counsel

Phalin L. Flowers
Legislative Secretary

Prepared September 27, 2007

AGENDA

GOVERNMENT COMPETITION AND PRIVATIZATION SUBCOMMITTEE

UTAH LEGISLATURE

Thursday, October 25, 2007 • 9:00 a.m. • Room W125 House Building

Approximate
Time Frame

9:00 1. Subcommittee Business

- Call to order
- Approval of the minutes of the September 26, 2007 meeting

9:05 2. Local Government Feasability and Economic Impact Studies

The Subcommittee will discuss requiring local government to do certain studies as a prerequisite to approving expenditure of funds.

- Senator Scott K. Jenkins
- Lincoln Shurtz, Director of Legislative Affairs, Utah League of Cities and Towns
- Subcommittee discussion
- Public comment

10:00 3. Consider Legislative Proposals

- Staff presentation

A. Proposal to Create a Government Competition and Privatization Act

The Subcommittee will discuss creating the Government Competition and Privatization Act, which could replace the current Privatization Policy Board with a Commission, require that an inventory of commercial activities be taken periodically, and set requirements for the amount a government entity charges for private use of a public facility.

- Lincoln Shurtz, Director of Legislative Affairs, Utah League of Cities and Towns
- Representative of Utah Association of Counties
- Privatization Policy Board
- Subcommittee discussion
- Public comment

B. Local Government Accounting for Competitive Activities

The Subcommittee will discuss requiring local government to separately account for an activity that competes with private enterprise.

- Representative of Utah Association of Counties
- Lincoln Shurtz, Director of Legislative Affairs, Utah League of Cities and Towns
- Subcommittee discussion
- Public comment

Break for Lunch

A break for lunch will be taken during this agenda item. A box lunch will be provided for subcommittee members.

1:00 **4. Interlocal Cooperative Agencies Providing Telecommunication Services**
The Subcommittee will discuss measures the Legislature could take to address the growth in an interlocal cooperative agency providing telecommunication services.

- Introduction
- Subcommittee discussion
- Public comment

1:30 **5. Other Items / Adjourn**

**MINUTES OF THE
GOVERNMENT COMPETITION AND PRIVATIZATION SUBCOMMITTEE**

Wednesday, September 26, 2007 – 1:00 p.m. – Room W125 House Building

Members Present:

Sen. Howard A. Stephenson, Senate Chair
Rep. Craig A. Frank, House Chair
Sen. Brent H. Goodfellow
Sen. Wayne L. Niederhauser
Rep. Tim M. Cosgrove
Rep. Michael T. Morley

Members Absent:

Rep. Carl W. Duckworth
Rep. Kevin S. Garn
Rep. Mark W. Walker

Staff Present:

Mr. Leif G. Elder, Research Analyst
Ms. Patricia Owen, Associate General Counsel
Ms. Phalin L. Flowers, Legislative Secretary

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Subcommittee Business

Chair Frank called the meeting to order at 1:27 p.m. He excused Rep. Garn from the meeting.

MOTION: Rep. Morley moved to approve the minutes of the September 6, 2007 meeting. The motion passed unanimously.

2. Local Government Facilities and Services

Sen. Scott K. Jenkins distributed and discussed S.B. 222, 1st Substitute S.B. 222, and 2nd Substitute S.B. 222, all titled "Local Government Feasibility and Economic Impact Studies," from the 2004 General Session. He voiced concern that a municipality may not be evaluating competitive impacts before it offers a service or builds a facility.

Mr. Lincoln Shurtz, Director of Legislative Affairs, Utah League of Cities and Towns, explained that municipalities currently conduct feasibility studies and that municipalities would not be able to obtain bonds to complete projects without doing those studies.

3. Local Government Budgeting

This item was not discussed.

4. Imputing Taxes / Charge Full Price

Sen. Stephenson introduced this issue and explained that appropriate pricing is related to a government competing with the private sector, in relation to the use of public buildings for private functions, such as wedding receptions.

Mr. Roger Tew, Utah League of Cities and Towns, said that, overall, the public assumes a public building is available for use beyond the purpose of the building. He explained that the fees a municipality may charge for the use of a public building are generally related to costs such as a cleaning deposit rather than being set at a profitable amount for the municipality.

Ms. Tanya Henry, previous private business owner and member of the Utah Privatization Policy Board, spoke in favor of limiting the use of public buildings for private functions.

5. Broadband

Mr. Elder distributed and discussed a letter to the Subcommittee from Baja Broadband concerning municipal broadband. He also distributed and discussed a presentation titled "Utah Telecommunication Open Infrastructure Agency." He overviewed the Telecommunications Act of 1996 as it relates to broadband, the actual and approved budgets of UTOPIA, the liability of pledging members of UTOPIA, and the types and amounts of bonds issued to UTOPIA.

Mr. David Shaw, Legal Counsel, UTOPIA, introduced Mr. Jim Baller with The Baller Herbst Law Group. Mr. Shaw also provided the subcommittee chairs with two binders that include UTOPIA's budget information, interlocal cooperative agreement, financial statements, and feasibility studies.

Mr. Baller gave a presentation on broadband's importance to the United State's global competitiveness.

Mr. Pete Ashdown, Owner, XMission Internet, explained that his company is a UTOPIA provider and spoke in support of UTOPIA.

Mr. Royce Van Tassell, Vice President, Utah Taxpayers Association, noted that UTOPIA's take-rates and household revenues are low because of broadband competition. He spoke in opposition to UTOPIA and said participating municipalities put taxpayer dollars at risk.

Mr. Jesse Harris, private citizen, explained that UTOPIA can provide businesses with higher broadband speeds at much lower costs than other providers.

Mr. Kyle Waters, Venture Data, noted that his business is located in Murray, which is a member of UTOPIA. He explained that his business was considering relocating, but after determining the cost savings that UTOPIA provides, his business decided not to relocate. He also said that he personally moved to Murray to be able to use the broadband offered by UTOPIA.

Mr. Eric Isom, Government Affairs Director, Qwest, asked that this discussion be continued at a future meeting.

6. Other Items / Adjourn

The next subcommittee meetings were scheduled for Monday, October 15, 2007 at 9:00 a.m. and Thursday, October 25, 2007 at 9:00 a.m.

MOTION: Sen. Goodfellow moved to adjourn the meeting. The motion passed unanimously.

Chair Frank adjourned the meeting at 5:22 p.m.

WORKING DRAFT – FOR DISCUSSION PURPOSES ONLY

**LOCAL GOVERNMENT FISCAL AND
ECONOMIC IMPACT STUDIES**

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LONG TITLE

General Description:

This bill modifies the provisions related to a county, city, or town to require a fiscal and economic impact studies before certain expenditure of monies.

Highlighted Provisions:

This bill:

- defines terms;
- requires a fiscal study and an economic impact study before the approval of certain expenditures;
- establishes what is to be included in the required studies;
- requires independence of the person conducting the required studies; and
- provides for a hearing on an economics study.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

10-1-119, Utah Code Annotated 1953

17-15-30, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 10-1-119 is enacted to read:

10-1-119. Required fiscal and economic impact studies.

(1) As used in this section:

(a)(i) Except as provided in Subsection (1)(a)(ii), "competitive municipal project" means one or more of the following that is constructed, acquired, leased, or operated by a municipality:

(A) a golf course;

(B) an athletic field;

WORKING DRAFT – FOR DISCUSSION PURPOSES ONLY

- 1 (C) a gymnasium;
- 2 (D) a swimming pool;
- 3 (E) a hospital;
- 4 (F) a pharmacy;
- 5 (G) an ambulance service;
- 6 (H) garbage and refuse collection services; or
- 7 (I) a food services facility.
- 8 (ii) "Competitive municipal project" does not include a project described in Subsection (1)(a)(i) if the
- 9 municipality designs the project so that a revenue generating activity at the project is performed by a private
- 10 person pursuant to a contract, lease, or other arrangement.
- 11 (b) "Economic impact study" means a study meeting the requirements of Subsection (5).
- 12 (c) "Fiscal study" means a study meeting the requirements of Subsection (4).
- 13 (d) "Independent consultant" means a person appointed in accordance with Subsection (3).
- 14 (e) "New competitive municipal project" means a competitive municipal project:
- 15 (i) that the municipality has not constructed, acquired, leased, or operated before May 5, 2008;
- 16 (ii) for which the municipality has not expended monies before May 5, 2008, including monies for the
- 17 planning of the competitive municipal project;
- 18 (iii) that is not directly related to a competitive municipal project:
- 19 (A) that the municipality constructed, acquired, leased, or operated before May 5, 2008; or
- 20 (B) for which the municipality has expended monies before May 5, 2008; or
- 21 (iv) for which the municipality has not entered into a contract before May 5, 2008.
- 22 (f) "Private person" means a person who is not a government entity.
- 23 (2) Before a legislative body of a municipality may approve the expenditure of monies for a new competitive
- 24 municipal project, the legislative body shall:
- 25 (a) hire an independent consultant in accordance with Subsection (3);
- 26 (b) obtain from an independent consultant a fiscal study meeting the requirements of Subsection (4);
- 27 (c) obtain from an independent consultant an economic impact study meeting the requirements of
- 28 Subsection (5); and
- 29 (d) hold the public hearing required by Subsection (6).
- 30 (3) A legislative body required to comply with Subsection (2) shall:
- 31 (a) hire an independent consultant who:
- 32 (i) is an expert in the processes and economics of local government;
- 33 (ii) will receive no economic benefit from the municipality's decision to expend monies on the new

WORKING DRAFT – FOR DISCUSSION PURPOSES ONLY

- 1 competitive municipal project that the independent consultant is to study;
- 2 (iii) has no ownership interest in or management authority over a person who will receive an economic
- 3 benefit from the municipality's decision to expend monies on the new competitive municipal project that the
- 4 independent consultant is to study; and
- 5 (iv) is not an employee of the municipality;
- 6 (b) require the independent consultant to:
- 7 (i) complete:
- 8 (A) a fiscal study;
- 9 (B) an economic impact study; or
- 10 (C) both a fiscal study and an economic study;
- 11 (iii) submit written results of a study completed by the independent consultant to the legislative body; and
- 12 (iii) participate in a public hearing described in Subsection (6).
- 13 (4) A fiscal study conducted under this section shall include:
- 14 (a) a determination of whether or not there is a consistent and reliable funding source for the financing of the
- 15 new competitive municipal project;
- 16 (b) a list of the one or more contracts, private leases, or rental arrangements under which the revenues
- 17 received will be used to pay for all, or a portion, of the capital outlay or operation and maintenance of the
- 18 new competitive municipal project;
- 19 (c) an identification of an anticipated user fee that may be anticipated and used for all, or a portion, of the
- 20 capital outlay or operation and maintenance of the new competitive municipal project; and
- 21 (d) a demonstration of the life cycle of the financing the new competitive municipal project to a level of
- 22 specificity that can show short or long term public revenue gains or subsidies that may associated with the
- 23 new competitive municipal project.
- 24 (5) An economic impact study conducted under this section shall include:
- 25 (a) a statement as to whether the new competitive municipal project meets a need that cannot be met by a
- 26 private person;
- 27 (b) whether one or more persons provide goods or services similar to the new competitive municipal project
- 28 being studied; and
- 29 (c) if a municipality constructs, acquires, leases, or operates a new competitive municipal project, what
- 30 economic impact would be experienced by:
- 31 (i) a facility operated by a private person described in Subsection (5)(b); and
- 32 (ii) the general market in which the facility being studied would operate.
- 33 (6)(a) If required by Subsection (2), a legislative body shall hold at least one public hearing:

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- 1 (i)(A) after receiving both the fiscal study and the economic impact study required by Subsection (2); and
2 (B) before approving an expenditure of monies for a new competitive municipal project;
3 (ii) for the purpose of allowing the public to:
4 (A) become informed about the results of the studies required by Subsection (2);
5 (B) ask questions of the municipal legislative body about the results of the studies required by Subsection
6 (2); and
7 (C) ask questions of the independent consultant about the results of the studies required by Subsection (2);
8 and
9 (iii) after giving notice in accordance with Subsection (6)(b), in addition complying with Title 57, Chapter 4,
10 Utah Open and Public Meetings Act.
11 (b)(i) Subject to Subsection (6)(b)(ii) and (iii), the municipality shall publish notice of a public hearing held
12 under this section at least once a week for three consecutive weeks in a newspaper of general circulation in
13 the municipality.
14 (ii) The last publication of notice required under Subsection (6)(b)(i) shall be at least three days before the
15 first public hearing required under this Subsection (6).
16 (iii) (A) If there is no newspaper of general circulation in the municipality, for each 1,000 residents, the
17 municipality shall post at least one notice of a public hearing held under this section in a conspicuous place
18 within the municipality that is likely to give notice of the public hearing to the greatest number of residents of
19 the municipality.
20 (B) The municipality shall post the a notice described in Subsection (6)(c)(iii)(A) at least seven days before
21 the public hearing held under this Subsection (6).

22
23 Section 2. Section 17-15-30 is enacted to read:

24 **17-15-30. Required fiscal and economic impact studies.**

25 (1) As used in this section:

26 (a)(i) Except as provided in Subsection (1)(a)(ii), "competitive county project" means one or more of the
27 following that is constructed, acquired, leased, or operated by a county:

28 (A) a golf course;

29 (B) an athletic field;

30 (C) a gymnasium;

31 (D) a swimming pool;

32 (E) a hospital;

33 (F) a pharmacy;

WORKING DRAFT – FOR DISCUSSION PURPOSES ONLY

- 1 (G) an ambulance service;
- 2 (H) garbage and refuse collection services; or
- 3 (I) a food services facility.
- 4 (ii) "Competitive county project" does not include a project described in Subsection (1)(a)(i) if the county
- 5 designs the project so that a revenue generating activity at the project is performed by a private person
- 6 pursuant to a contract, lease, or other arrangement.
- 7 (b) "Economic impact study" means a study meeting the requirements of Subsection (5).
- 8 (c) "Fiscal study" means a study meeting the requirements of Subsection (4).
- 9 (d) "Independent consultant" means a person appointed in accordance with Subsection (3).
- 10 (e) "New competitive county project" means a competitive county project:
- 11 (i) that the county has not constructed, acquired, leased, or operated before May 5, 2008;
- 12 (ii) for which the county has not expended monies before May 5, 2008, including monies for the planning of
- 13 the competitive county project;
- 14 (iii) that is not directly related to a competitive county project:
- 15 (A) that the county constructed, acquired, leased, or operated before May 5, 2008; or
- 16 (B) for which the county has expended monies before May 5, 2008; or
- 17 (iv) for which the county has not entered into a contract before May 5, 2008.
- 18 (f) "Private person" means a person who is not a government entity.
- 19 (2) Before a legislative body of a county may approve the expenditure of monies for a new competitive
- 20 county project, the legislative body shall:
- 21 (a) hire an independent consultant in accordance with Subsection (3);
- 22 (b) obtain from an independent consultant a fiscal study meeting the requirements of Subsection (4);
- 23 (c) obtain from an independent consultant an economic impact study meeting the requirements of
- 24 Subsection (5); and
- 25 (d) hold the public hearing required by Subsection (6).
- 26 (3) A legislative body required to comply with Subsection (2) shall:
- 27 (a) hire an independent consultant who:
- 28 (i) is an expert in the processes and economics of local government;
- 29 (ii) will receive no economic benefit from the county's decision to expend monies on the new competitive
- 30 county project that the independent consultant is to study;
- 31 (iii) has no ownership interest in or management authority over a person who will receive an economic
- 32 benefit from the county's decision to expend monies on the new competitive county project that the
- 33 independent consultant is to study; and

WORKING DRAFT – FOR DISCUSSION PURPOSES ONLY

- 1 (iv) is not an employee of the county;
- 2 (b) require the independent consultant to:
- 3 (i) complete:
- 4 (A) a fiscal study;
- 5 (B) an economic impact study; or
- 6 (C) both a fiscal study and an economic study;
- 7 (iii) submit written results of a study completed by the independent consultant to the legislative body; and
- 8 (iii) participate in a public hearing described in Subsection (6).
- 9 (4) A fiscal study conducted under this section shall include:
- 10 (a) a determination of whether or not there is a consistent and reliable funding source for the financing of the
- 11 new competitive county project;
- 12 (b) a list of the one or more contracts, private leases, or rental arrangements under which the revenues
- 13 received will be used to pay for all, or a portion, of the capital outlay or operation and maintenance of the
- 14 new competitive county project;
- 15 (c) an identification of an anticipated user fee that may be anticipated and used for all, or a portion, of the
- 16 capital outlay or operation and maintenance of the new competitive county project; and
- 17 (d) a demonstration of the life cycle of the financing the new competitive county project to a level of
- 18 specificity that can show short or long term public revenue gains or subsidies that may associated with the
- 19 new competitive county project.
- 20 (5) An economic impact study conducted under this section shall include:
- 21 (a) a statement as to whether the new competitive county project meets a need that cannot be met by a
- 22 private person;
- 23 (b) whether one or more persons provide goods or services similar to the new competitive county project
- 24 being studied; and
- 25 (c) if a county constructs, acquires, leases, or operates a new competitive county project, what economic
- 26 impact would be experienced by:
- 27 (i) a facility operated by a private person described in Subsection (5)(b); and
- 28 (ii) the general market in which the facility being studied would operate.
- 29 (6)(a) If required by Subsection (2), a legislative body shall hold at least one public hearing:
- 30 (i)(A) after receiving both the fiscal study and the economic impact study required by Subsection (2); and
- 31 (B) before approving an expenditure of monies for a new competitive county project;
- 32 (ii) for the purpose of allowing the public to:
- 33 (A) become informed about the results of the studies required by Subsection (2);

WORKING DRAFT – FOR DISCUSSION PURPOSES ONLY

1 (B) ask questions of the county legislative body about the results of the studies required by Subsection (2);
2 and
3 (C) ask questions of the independent consultant about the results of the studies required by Subsection (2);
4 and
5 (iii) after giving notice in accordance with Subsection (6)(b), in addition complying with Title 57, Chapter 4,
6 Utah Open and Public Meetings Act.
7 (b)(i) Subject to Subsection (6)(b)(ii) and (iii), the county shall publish notice of a public hearing held under
8 this section at least once a week for three consecutive weeks in a newspaper of general circulation in the
9 county.
10 (ii) The last publication of notice required under Subsection (6)(b)(i) shall be at least three days before the
11 first public hearing required under this Subsection (6).
12 (iii) (A) If there is no newspaper of general circulation in the county, for each 1,000 residents, the county
13 shall post at least one notice of a public hearing held under this section in a conspicuous place within the
14 county that is likely to give notice of the public hearing to the greatest number of residents of the county.
15 (B) The county shall post the a notice described in Subsection (6)(c)(iii)(A) at least seven days before the
16 public hearing held under this Subsection (6).

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18

Working Drafts: General Restructuring Related to Government Competition and Privatization

The following three pieces of legislation are in working draft form and designed to be incorporated into a single piece of legislation if the Government Competition and Privatization Subcommittee elects to have them combined. The following should assist you in reviewing the legislation.

- There are three different pieces of legislation:
 - Government Competition and Privatization Act
 - Charges for Private Use of Public Facilities – INSERT
 - Inventory and Review – INSERT

- The Government Competition and Privatization Act is the foundational draft. Although this draft contains no underlined language, the draft repeals the existing Privatization Policy Board provisions and enacts all new statutory language.

- The other two drafts are to be read as inserts into the Government Competition and Privatization Act. Language in these drafts that is underlined is language that is to be added to the Government Competition and Privatization Act. If the language is not underlined, it is contained in the Government Competition and Privatization Act and shown in the other draft in order to show the context of any changes to that language made by the insert draft.

If you have questions regarding these drafts, please feel free to contact Patricia Owen or Leif Elder at the Office of Legislative Research and General Counsel.

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

GOVERNMENT COMPETITION AND PRIVATIZATION ACT

2

LONG TITLE

General Description:

This bill repeals the existing Privatization Policy Board and enacts the Government Competition and Privatization Act, including creating the Government Competition and Privatization Commission.

This bill:

- ▶ repeals provisions related to the Privatization Policy Board;
- ▶ defines terms;
- ▶ creates the Government Competition and Privatization Commission;
- ▶ establishes the duties of the commission, including rulemaking;
- ▶ imposes requirements for when a government entity may compete with a private enterprise;
- ▶ addresses issues specific to an institution of higher education;
- ▶ imposes requirements for review of privatization; and
- ▶ provides for enforcement including:
 - exempting administrative actions from the Administrative Procedures Act;
 - providing a complaint process;
 - providing for injunctions; and
 - providing for enforcement.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2008.

This bill coordinates with X, to provide for technical renumbering.

List of sections affected:

ENACTS:

63-55d-101

63-55d-102

63-55d-201

63-55d-202

63-55d-203

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

34 63-55d-301

35 63-55d-302

36 63-55d-303

37 63-55d-401

38 63-55d-402

39 63-55d-501

40 63-55d-502

41 63-55d-503

42 63-55d-504

43 63-55d-505

44

45 REPEALS:

46 63-55a-1

47 63-55a-2

48 63-55a-3

49

50 Statutory text:

51

52 Section 1. Section 63-55d-101 is enacted to read:

53 **CHAPTER 55d. GOVERNMENT COMPETITION AND PRIVATIZATION ACT**

54 **Part 1. General Provisions**

55 **63-55d-101. Title.**

56 This chapter is known as the "Government Competition and Privatization Act."

57

58 Section 2. Section 63-55d-102 is enacted to read:

59 **63-55d-102. Definitions.**

60 As used in this chapter:

61 (1)(a) "Activity" means to:

62 (i) perform a service; or

63 (ii) provide a good.

64 (b) "Activity" includes to:

65 (i) manufacture a good or service;

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

- 66 (ii) process a good or service;
- 67 (iii) sell a good or service;
- 68 (iv) offer for sale a good or service;
- 69 (v) rent a good or service;
- 70 (vi) lease a good or service;
- 71 (vii) deliver a good or service;
- 72 (viii) distribute a good or service: or
- 73 (ix) advertise a good or service.
- 74 (2) "By-product of a commercial activity" is as defined by the commission by rule made in
- 75 accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.
- 76 (3) "Commercial activity" means to engage in an activity that can be obtained in whole or in part
- 77 from a private enterprise.
- 78 (4) "Commission" means the Government Competition and Privatization Commission created in
- 79 Section 63-55d-201.
- 80 (5) "Commission accounting method" means one or more accounting rules made by the
- 81 commission in accordance with:
- 82 (a) Title 63, Chapter 46a, Utah Administrative Rulemaking Act; and
- 83 (b) Section 63-55d-203.
- 84 (6) "Competitive impact statement" means a statement that complies with Section 63-55d-302.
- 85 (7) "Department" means the Department of Administrative Services.
- 86 (8) "Faculty member" means a person treated as a faculty member by an institution of higher
- 87 education for a purposes other than this chapter.
- 88 (9) "Government entity" means:
- 89 (a) the state;
- 90 (b) a political subdivision of the state, including a:
- 91 (i) county;
- 92 (ii) city;
- 93 (iii) town;
- 94 (iv) local school district;
- 95 (v) local district; or
- 96 (vi) special service district;
- 97 (c) an institution of higher education, as defined in Section 53B-3-102;

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

- 98 (d) an agency of an entity described in this Subsection (9), including a department, office, division,
99 authority, commission, or board; and
- 100 (e) an entity created by an interlocal cooperative agreement under Title 11, Chapter 13, Interlocal
101 Cooperation Act, between two or more entities described in this Subsection (9).
- 102 (10) "Invited guest" means a person who enters onto a campus of an institution of higher
103 education:
- 104 (a) for an act that is:
- 105 (i) educational;
- 106 (ii) related to research; or
- 107 (iii)(A) normally associated with an institution of higher education; and
- 108 (B) for a purpose or has a result that does not result in the institution of higher education
109 competing with a private enterprise; and
- 110 (b) not primarily to purchase a good or service not related to an act described in Subsection
111 (10)(a).
- 112 (11) "Ordinary business channel" is as defined by the commission by rule made in accordance with
113 Title 63, Chapter 46a, Utah Administrative Rulemaking Act.
- 114 (12) "Private enterprise" means a person that for profit:
- 115 (a) manufactures a good or service;
- 116 (b) processes a good or service;
- 117 (c) sales a good or service;
- 118 (d) offers for sale a good or service;
- 119 (e) rents a good or service;
- 120 (f) leases a good or service;
- 121 (g) delivers a good or service;
- 122 (h) distributes a good or service: or
- 123 (i) advertises a good or service.
- 124 (13) "Privatize" means that an activity engaged in by a government entity is transferred so that a
125 private enterprise engages in the activity including a transfer by:
- 126 (a) contract;
- 127 (b) transfer of property; or
- 128 (c) another arrangement.

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129 (14) "Staff member" means an individual who an institution of higher education treats as staff to
130 the institution of higher education for a purpose other than this chapter.

131 (15) "Student" means an individual who, under rules made by the Board of Regents, is:

132 (a) enrolled or accepted for enrollment at an institution of higher education; and

133 (b) is making suitable progress in the individual's education toward obtaining a degree or other
134 appropriate certification in accordance with standards acceptable to the Board of Regents.

135 (16) "Total actual cost" means the costs incurred, directly or indirectly, when engaging in an
136 activity by the person who engages in the activity.

137

138 Section 3. Section 63-55d-201 is enacted to read:

139 **Part 2. Government Competition and Privatization Commission**

140 **63-55d-201. Government Competition and Privatization Commission created.**

141 (1)(a) There is created in the department the Government Competition and Privatization
142 Commission consisting of seven members appointed by the governor.

143 (b) The governor shall appoint as members of the commission:

144 (i) four individuals:

145 (A) each of whom is an owner or officer of a private enterprise that has a location in the state;

146 (B) one of whom is chosen from at least two names recommended by the speaker of the House of
147 Representatives; and

148 (C) one of whom is chosen from at least two names recommended by the president of the Senate;

149 (ii) one chief administrative officer of a state government entity;

150 (iii) one representative from a political subdivision of the state chosen from at least four names:

151 (A) at least two names being recommended from the League of Cities and Towns; and

152 (B) at least two names being recommended from the Utah Association of Counties; and

153 (iv) one representative who is chosen from at least four names:

154 (A) at least two names being recommended from the State Board of Education; and

155 (B) at least two names being recommended from the Board of Regents.

156 (c) A person described in Subsection (1)(b) as recommending names to the governor shall submit
157 the recommended names to the governor no later than 30 days from the day on which the person
158 receives notice from the governor that the governor is in need of the recommendations.

159 (2) (a) Except as required by Subsection (2)(b), a commission member shall serve until the sooner
160 of:

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

- 161 (i) the expiration of a four-year term; or
162 (ii) the day on which the commission member no longer holds the position required under
163 Subsection (1) to be appointed by the governor.
- 164 (b) The governor shall, at the time of appointment or reappointment, adjust the length of terms to
165 ensure that the terms of the commission members are staggered so that approximately half of the
166 commission is appointed every two years.
- 167 (c) A commission member shall serve until a successor is appointed.
- 168 (d) When a vacancy occurs in the membership for any reason, the governor shall appoint a
169 replacement to the unexpired term in a manner consistent with Subsection (1)(b).
- 170 (3) By no later than July 31 each year the commission shall select one of its members to serve as
171 chair of the commission for a one-year term.
- 172 (4) The commission shall meet as scheduled by the chair, except that the chair shall schedule a
173 meeting at least quarterly.
- 174 (5)(a) Five members of the commission constitute a quorum of the commission.
- 175 (b) An action of the commission requires that:
- 176 (i) a quorum be present; and
177 (ii) a majority of the commission members that are present vote for the action.
- 178 (6) (a) (i) A commission member who is not a government employee may not receive
179 compensation or benefits for the commission member's service, but may receive per diem and
180 expenses incurred in the performance of the commission member's official duties at the rates
181 established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.
- 182 (ii) A commission member who is not a government employee may decline to receive per diem
183 and expenses for the commission member's service.
- 184 (b) (i) A state government officer or employee commission member who does not receive salary,
185 per diem, or expenses from the commission member's agency for the commission member's
186 service may receive per diem and expenses incurred in the performance of the commission
187 member's official duties from the commission at the rates established by the Division of Finance
188 under Sections 63A-3-106 and 63A-3-107.
- 189 (ii) A state government officer or employee commission member may decline to receive per diem
190 and expenses for the commission member's service.
- 191 (c) (i) A higher education commission member who does not receive salary, per diem, or
192 expenses from the entity that the commission member represents for the commission member's

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

193 service may receive per diem and expenses incurred in the performance of the commission
194 member's official duties from the commission at the rates established by the Division of Finance
195 under Sections 63A-3-106 and 63A-3-107.

196 (ii) A higher education commission member may decline to receive per diem and expenses for the
197 commission member's service.

198 (d) (i) A local government commission member who does not receive salary, per diem, or
199 expenses from the entity that the commission member represents for the commission member's
200 service may receive per diem and expenses incurred in the performance of the commission
201 member's official duties at the rates established by the Division of Finance under Sections
202 63A-3-106 and 63A-3-107.

203 (ii) A local government commission member may decline to receive per diem and expenses for
204 the commission member's service.

205 (7) The department shall staff the commission.

206 (8) (a) The commission may appoint one or more advisory groups that may with respect to an
207 issue within the jurisdiction of the commission:

208 (i) conduct a study, research, or analyses; and
209 (ii) make a report, including a recommendation, to the commission.

210 (b) An advisory group shall include at least one member of the commission.
211

212 Section 4. Section 63-55d-202 is enacted to read:

213 **63-55d-202. Commission duties.**

214 (1) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission
215 shall make rules to:

216 (a) define:

217 (i) "byproduct of a commercial activity"; and
218 (ii) "ordinary business channel";

219 (b) establish a commission accounting method in accordance with Section 63-55d-203;

220 (c) establish a procedure for preparing competitive impact statements that is:

221 (i) consistent with Section 63-55d-302; and
222 (ii) provides a process for issuing a request for proposals:

223 (A) to ensure that the request for proposals is distributed widely; and
224 (B) that is consistent with Title 63, Chapter 55, Utah Procurement Act;

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

225 (d) establish a procedure for an institution of higher education requesting an approval of the
226 commission under Section 63-55d-303;

227 (e) establish one or more standards to recommend privatization of an activity of a government
228 entity in accordance with Part 4, Privatization Requirements; and

229 (f) establish a procedure for a person to file a complaint that is consistent with Part 5,
230 Enforcement.

231 (2) The commission shall comply with Part 3, Government Competition Requirements:

232 (a) to review or approve a commercial activity of a government entity; and

233 (b) to review or approve a commercial activity of an institutional of higher education, including a
234 charge for the sale of a byproduct of a commercial activity.

235 (3) The commission shall comply with Part 4, Privatization Requirements, to review privatization of
236 an activity of a government entity;

237 (4) The commission shall comply with Part 5, Enforcement, if a complaint is filed with the
238 commission in accordance with Section 63-55d-502.

239 (5) The commission shall communicate with private or public entities that address government
240 competition with a private enterprise or privatization; and

241 (6)(a) The commission shall prepare an annual report that:

242 (i) describes the commission's activities, including the commission's actions with respect to a
243 complaint filed under Section 63-55d-502; and

244 (ii) makes recommendations, including the need for legislation, if any, to address an activity of a
245 government entity that the commission finds:

246 (A) is in competition with a private enterprise; or

247 (B) should be privatized;

248 (b) submit the annual report by no later than December 1 to the Legislature and the governor; and

249 (d) if the annual report includes a recommendation described in Subsection(6)(b)(ii) regarding a
250 government entity, file a copy of the recommendation with:

251 (i) the chief administrative officer of the government entity that is the subject of the
252 recommendation; and

253 (iii) the Office of Legislative Fiscal Analyst, for submission to the legislative appropriation
254 subcommittee that has responsibility related to that government entity.

255

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

256 Section 5. Section 63-55d-203 is enacted to read:

257 **63-55d-203. Commission accounting method**

258 The commission by rule made in accordance with Title 63, Chapter 46a, Utah Administrative
259 Rulemaking Act, shall establish an accounting method that:

260 (1) is similar to generally accepted accounting principles used by a private enterprise;

261 (2) allows a government entity to identify the total actual cost of engaging in a commercial activity
262 in a manner similar to how a private enterprise identifies the total actual cost to the private
263 enterprise, including the following:

264 (a) a labor expense, such as:

265 (i) compensation and benefits;

266 (ii) a cost of training;

267 (iii) a cost of paying overtime;

268 (iv) a cost of supervising labor; or

269 (v) another personnel expense;

270 (b) an operating cost, such as:

271 (i) vehicle maintenance and repair;

272 (ii) a marketing, advertising, or other sales expense;

273 (iii) an office expense;

274 (iv) a cost of an accounting operation, such as billing;

275 (v) an insurance expense;

276 (vi) a real estate or equipment cost;

277 (vii) a debt service cost; or

278 (viii) a proportionate amount of other overhead or of a capital expense, such as vehicle

279 depreciation and depreciation of other fixed assets;

280 (c) a contract management cost; and

281 (d) another cost particular to a person supplying the good or service;

282 (3) provides a process to estimate the taxes a government entity would pay related to engaging in
283 a commercial activity if the government entity were required to pay federal, state, and local taxes
284 to the same extent as a private enterprise engaging in the commercial activity; and

285 (4) allows an institution of higher education to calculate the market price of the sale of a byproduct
286 of a commercial activity as described in Subsection 63-55d-303(4).

287

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

288 Section 6. Section 63-55d-301 is enacted to read:

289 **Part 3. Government Competition Requirements**

290 **63-55d-301. Government competition with private enterprise prohibited.**

291 (1) Except as provided in Subsection (2) or (3) or, for purposes of an institution of higher
292 education, except as provided in Section 63-55d-303, a government entity may not engage in a
293 commercial activity:

294 (a) to provide a good or service for:

295 (i) its own use;

296 (ii) the use of another government entity; or

297 (iii) use by the public; and

298 (b) if a good or service with respect to the commercial activity can be obtained from a private
299 enterprise through the use of an ordinary business channel.

300 (2) A government entity may engage in a commercial activity that is not described in
301 Subsection (3) if:

302 (a) the commercial activity is expressly authorized by statute; or

303 (b)(i) the government entity requests approval of the commercial activity before the day on which
304 the government entity engages in the commercial activity; and

305 (ii) the commission finds that:

306 (A) a private enterprise is not able to provide a good or service with respect to the commercial
307 activity;

308 (B) use of a private enterprise causes an unacceptable delay or disruption of an activity that is
309 essential;

310 (C) the commercial activity is inherently related to the defense of the state or the government
311 entity; or

312 (D) the government entity provides the good or service with respect to that commercial activity:

313 (I) to a government entity on a continuing basis; and

314 (II) at an amount included in a competitive impact statement that is less than the cost to the
315 government entity receiving the good or service if the good or service were obtained from a private
316 enterprise as determined relating to the specific good or service; and

317 (III) the good or serve with respect to that commercial activity is of at least equal quality to the
318 good or service that could be obtained from a private enterprise at a reasonably comparable cost
319 to the government entity receiving the good or service.

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

320 (3)(a) If a government entity is engaging in a commercial activity on July 1, 2008, the government
321 entity may continue to engage in the commercial activity until June 30, 2009 without complying
322 with Subsection (2).

323 (b) To engage in a commercial activity on or after July 1, 2009, a government entity described in
324 Subsection (3)(a) shall comply with Subsection (2) as if the commercial activity is a new
325 commercial activity.

326

327 Section 7. Section 63-55d-302 is enacted to read:

328 **63-55d-302. Competitive impact statement.**

329 (1)(a) If a government entity seeks approval of the commission to engage in a commercial activity
330 under Subsection 63-55d-301(2)(b)(ii)(D), the government entity shall file with its request for
331 approval a competitive impact statement prepared in accordance with this section.

332 (b) A government entity shall include in a competitive impact statement in writing:

333 (i) the information described in Subsections (2), (3), and (4); and

334 (ii) any other information the commission requires by rule.

335 (2) A government entity shall calculate the sum of the following determined in accordance with the
336 commission accounting method:

337 (a) the total actual cost of the commercial activity to the government entity determined no later
338 than six months before the day on which the government entity files the competitive impact
339 statement with the commission; and

340 (b) the estimate of taxes a government entity would pay related to a commercial activity:

341 (i) if the government entity were required to pay federal, state, and local taxes to the same extent
342 as a private enterprise engaging in the commercial activity; and

343 (ii) determined no later than six months before the day on which the government entity files the
344 competitive impact statement with the commission.

345 (3)(a) No earlier than six months before the day on which a government entity files a competitive
346 impact statement with the commission, the government entity shall obtain at least one bid or
347 proposal for the commercial activity on the basis of a request for proposals for the commercial
348 activity that is issued in accordance with:

349 (i) Title 63, Chapter 55, Utah Procurement Act; and

350 (ii) rules of the commission.

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

351 (b) A government entity shall determine a cost figure for a private enterprise engaging in a
352 commercial activity:

353 (i) by using the one or more bids or proposals described in Subsection (3)(a); and

354 (ii) that includes a cost to the government entity to administering a bid or proposal.

355 (4) A government entity shall compare the amounts calculated under Subsection (2) with the cost
356 figure calculated under Subsection (3).

357

358 Section 8. Section 63-55d-303 is enacted to read:

359 **63-55d-303. Institution of higher education.**

360 (1) An institution of higher education is considered to engage in a commercial activity as
361 described Subsection 63-55d-301(1) if it engages in the commercial activity for its own use if it
362 engages in the commercial activity for:

363 (a) a student;

364 (b) a faculty member of the institution of higher education;

365 (c) a staff member of the institution of higher education; or

366 (d) an invited guest of the institution of higher education.

367 (2)(a) In addition to when an institution of higher education is allowed to engage in a commercial
368 activity under Section 63-55d-301, an institution of higher education may engage in a commercial
369 activity if:

370 (i) the institution of higher education requests approval of the commercial activity before the day on
371 which the institution of higher education engages in the commercial activity; and

372 (ii) the commission finds that the commercial activity:

373 (A) is necessary because a student needs to participate in the commercial activity to obtain a
374 degree or other appropriate certification in accordance with standards acceptable to the Board of
375 Regents;

376 (B) is a recognized and integral part of a teaching, educational, or research program that leads to
377 a degree or other appropriate certification in accordance with standards acceptable to the Board of
378 Regents; or

379 (C) consists of on-campus activity, including:

380 (I) food service;

381 (II) student housing;

382 (III) sponsorship of a cultural or athletic event;

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

383 (IV) providing a facility for recreation to a student, faculty member, or staff member;
384 (V) selling a course book or course-related supplies; or
385 (VI) selling one or more personal items bearing the institution of higher education's insignia:
386 (Aa) in a limited and reasonable quantity; and
387 (Bb) if the sale is incidental to the sale of a course book or another item permitted in Subsection
388 (2)(a)(b)(ii)(C)(V).

389 (b) An institution of higher education may not engage in a commercial activity through another
390 government entity unless the institution of higher education can directly engage in the commercial
391 activity under this Subsection (2).

392 (c) An institution of higher education may not engage in a commercial activity for another
393 government entity unless:

394 (i) the institution of higher education can engage in the commercial activity under this Subsection
395 (2); and
396 (ii) the other government entity can engage in the commercial activity under Section 63-55d-301.

397 (d)(i) If an institution of higher education is engaging in a commercial activity on July 1, 2008, the
398 institution of higher education may continue to engage in the commercial activity until June 30,
399 2009 without complying with this Subsection (2).

400 (ii) To engage in a commercial activity on or after July 1, 2009, an institution of higher education
401 described in Subsection (2)(d)(i) shall comply with this Subsection (2) as if the commercial activity
402 is a new commercial activity.

403 (3) An institution of higher education may not enter a competitive bidding for an activity unless:

404 (a) the institution of higher education requests approval to enter into competitive bidding for the
405 activity before the day on which the institution of higher education enters the competitive bid; and
406 (b) the commission finds that the activity:

407 (i) is to be performed by one or more students; and
408 (ii) is a recognized and integral part of a teaching, educational, or research program that leads to a
409 degree or other appropriate certification in accordance with standards acceptable to the Board of
410 Regents.

411 (4) An institution of higher education may not dispose by sale of a by-product of a commercial
412 activity notwithstanding whether the commercial activity is a recognized and integral part of
413 teaching, educational, or research program that leads to a degree or other appropriate certification
414 in accordance with standards acceptable to the Board of Regents unless:

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

415 (a) the sale is a recognized and integral part of the teaching, educational, or research program; or
416 (b)(i) before the sale of the byproduct, the commission determines that there is no other practical
417 way of disposing of the byproduct; and

418 (ii) the by-product is sold at its market value as determined under the commission accounting
419 method.

420 (5) In determining for purposes of this section whether a commercial activity is a recognized and
421 integral part of a teaching, educational, or research program that leads to a degree or other
422 appropriate certification in accordance with standards acceptable to the Board of Regents, the
423 commission shall consider:

424 (a) whether commercial activity is necessary for:

425 (i) a student to obtain a degree or other appropriate certification in accordance with standards
426 acceptable to the Board of Regents; or

427 (ii) a faculty member or staff member to engage in research or teaching;

428 (b) whether the commercial activity is a specialty good or service not generally available to the
429 public;

430 (c) whether a charge for a good or service related to the commercial activity:

431 (i) is sufficient to pay for the total actual costs to the institution of higher education of engaging in
432 the commercial activity; and

433 (ii) is similar to a charge for that good or service if provided by a private enterprise; and

434 (d) whether the institution of higher education ensures that a commercial activity is:

435 (i) only for:

436 (A) a student;

437 (B) a faculty member;

438 (C) a staff member; or

439 (D) an invited guest; and

440 (ii) not for the general public.

441

442 Section 9. Section 63-55d-401 is enacted to read:

443

Part 4. Privatization Requirements

63-55d-401. Review of privatization

445 (1) Notwithstanding whether a request for approval is filed under Section 63-55d-402 or a

446 complaint is filed under Section 63-55d-502, the commission may review whether or not an activity

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

447 of a government entity should be privatized, including determining whether or not if the activity is
448 privatized:

449 (a) at least the same type and quality of service or good would be provided; and

450 (b) the government entity would receive a cost saving.

451 (2) If the commission finds that an activity of a government entity should be privatized, the
452 commission shall comply with Subsection 63-55d-202(6) in completing its annual report.

453

454 Section 10. Section 63-55d-402 is enacted to read:

455 **63-55d-402. Notification of privatization**

456 (1) A government entity shall notify the commission at least 30 days after the day on which a
457 private enterprise begins to engage in the activity that the government entity privatizes.

458 (2) As part of the notice required by this section, a government entity shall describe:

459 (a) the method of privatization;

460 (b) the private enterprise that is engaging in the activity that is privatized;

461 (c) the cost to the government entity's budget of the activity before and after privatization;

462 (d) the manner by which the private enterprise assumes the liability to engage in the activity; and

463 (e) whether or not any change to statute was required to privatize the activity.

464

465 Section 11. Section 63-55d-501 is enacted to read:

466

Part 5. Enforcement

467 **63-55d-501. Exemption from Administrative Procedures Act.**

468 An action taken under this section by the commission is exempt from Title 63, Chapter 46b,
469 Administrative Procedures Act.

470

471 Section 12. Section 63-55d-502 is enacted to read:

472 **63-55d-502. Initial process for a complaint.**

473 (1) (a) A person who believes that a government entity is violating or has violated this chapter may
474 file a written complaint with the commission.

475 (b) The complainant shall state in the written complaint:

476 (i) the violation of the chapter; and

477 (ii) the basis for which the person believes the government entity is violating or has violated this
478 chapter.

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

479 (2) After receiving a complaint filed in accordance Subsection (1), the commission shall review the
480 complaint at its next regularly scheduled meeting to determine whether the complaint is made in
481 good faith.

482 (3) If the commission determines that the complaint is made in good faith, the commission shall:

483 (a) notify the following in writing that the government entity is required to respond to the complaint:

484 (i) the complainant; and

485 (ii) the government entity against which the complaint is filed; and

486 (b) require the government entity against which the complaint is filed to respond to the complaint.

487 (4)(a) Upon receipt of the notice described in Subsection (3), a government entity shall respond to
488 the commission in writing within 30 days of the day on which the government entity receives the
489 notice.

490 (b) In the response required by this Subsection (4), the government entity shall:

491 (i) admit or deny that the government entity is or has violated this chapter as stated in the
492 complaint;

493 (ii) state whether or not the government entity will take action to remedy a violation of this chapter
494 as stated in the complaint; and

495 (iii) if the government entity is taking remedial action, the remedial action the government entity is
496 taking.

497 (5)(a) If a government entity admits to a violation of this chapter and states that it will take remedial
498 action in accordance with Subsection (4), the commission may:

499 (i) monitor the remedial action of the government entity;

500 (ii) require additional action to remedy the violation;

501 (iii) impose time periods by which the government entity shall take an action; or

502 (iv) take a combination of Subsection (5)(a)(i) through (iii).

503 (b) If a government entity fails to cooperate with the commission under this Subsection (5), the
504 commission may conduct a hearing in accordance with Section 63-55d-503.

505

506 Section 13. Section 63-55d-503 is enacted to read:

507 **63-55d-503. Hearing – Costs – Termination of commercial activities.**

508 (1)(a) The commission shall hold a hearing on the complaint filed under Section 63-55d-502 if the
509 government entity against which the complaint is filed:

510 (i) denies that it is or has violated this chapter; or

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

511 (ii) is determined by the commission to have failed to cooperate as required by Subsection 63-55d-
512 502(5).

513 (b) The commission shall hold a hearing required under this Subsection (1) within 60 days of the
514 day on which:

515 (i) the commission receives the written denial of the complaint; or

516 (ii) the commission determines the government entity fails to cooperate as required by Subsection
517 63-55d-502(5).

518 (c) A hearing conduct under this section is open to the public, unless the commission closes the
519 hearing in accordance with Title 57, Chapter 4, Open and Public Meetings Act.

520 (2) At a hearing conducted under this section, the commission shall provide an opportunity to
521 present evidence to:

522 (a) the complainant; and

523 (b) the government entity against which the complaint is filed.

524 (3)(a) Within 30 days after the hearing, the commission shall:

525 (i) issue an order; and

526 (ii) provide a copy of the order to:

527 (A) the complainant; and

528 (B) the government entity against which the complaint is filed.

529 (b) An order required by this section shall be in writing and state:

530 (i) whether or not the government entity is or has violated this chapter;

531 (ii) what action, if any, the government entity is required to take to remedy a violation of this
532 chapter;

533 (iii) if the complaint is made on the basis of the government entity engaging in a commercial
534 activity, whether or not the government entity is required to stop engaging in the commercial
535 activity;

536 (iv) the time by which a government entity shall take an action required by the order; and

537 (v) any other finding the commission determines is appropriate.

538 (c) The commission may, in an order required by this Subsection (3), require a government entity
539 to privatize a commercial activity that is the basis of the complaint.

540 (4) If the commission determines that a government entity against which a complaint is filed does
541 not or has not violated this chapter, the commission may require the complainant to pay the lesser
542 of:

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

543 (a) the costs incurred by the commission in reviewing the complaint and conducting the hearing;
544 and

545 (b) \$1,000.

546 (6) A complainant or government entity may appeal an action by the commission to a district court
547 in the same manner that an informal adjudicative proceeding is appealed under Sections 63-46b-
548 14, 63-46b-15, 63-46b-17, and 63-46b-18.

549

550 Section 14. Section 63-55d-504 is enacted to read:

551 **63-55d-504. Injunction.**

552 (1) If a government entity fails to comply with an order of the commission issued under Section 63-
553 55d-503, the commission may file an action in district court to enjoin the government entity from
554 engaging in a commercial activity that is the basis of a finding by the commission in the order.

555 (2) The attorney general's office shall provide legal support to the commission for an action filed
556 under Subsection (1).

557

558 Section 15. Section 63-55d-505 is enacted to read:

559 **63-55d-505. Monitoring of compliance.**

560 (1) The commission may monitor a government entity's compliance with this chapter in
561 accordance with rules made by the commission.

562 (2) A government entity shall have written procedures implemented by the government entity to
563 monitor its own compliance with this chapter.

564

565 Section 16. **Effective date.**

566 This bill takes effect on July 1, 2008.

567

568 Section 17. **Coordination clause.**

569 Coordinate with legislation recodifying Title 63 to address both internal citations and the numbering
570 of the chapter.

571

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

CHARGES FOR PRIVATE USE OF PUBLIC FACILITIES – INSERT

LONG TITLE

General Description:

....

Highlighted Provisions:

This bill:

▶

▶ imposes requirements for review of privatization; ~~and~~

▶ establishes a process to determine a minimum amount that can be charged by a government entity;

▶ addresses collection of a charge;

▶ requires reporting; and

▶

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

List of sections affected:

AMENDS:

ENACTS:

....

~~[63-55d-505]~~

63-55d-601

63-55d-602

63-55d-603

63-55d-604

63-55d-605

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

Statutory text:

CHAPTER 55d. GOVERNMENT COMPETITION AND PRIVATIZATION ACT

Part 1. General Provisions

63-55d-102. Definitions

As used in this chapter:

(2) "Approximate value of a public facility" means the value of a public facility determined by the county assessor that approximates the fair market value of the public facility in accordance with Section 63-55d-502.

(8) "Daily square foot charge" means the amount calculated under Subsection 63-55d-501(2).

(15)(a) "Private event" means an event that:

(i) is primarily operated by a private person; and

(ii) is not operated on behalf of a government entity.

(b) "Private event" means an event described in Subsection (15)(a), whether or not:

(i) the general public is permitted to attend the event; or

(ii) the private person charges a person for attending the event.

(17) "Private person" means a person who is not a government entity.

(18)(a) "Public facility" means a building, structure, or other improvement that is constructed on property owned by a government entity.

(b) "Public facility" does not mean:

(i) an unoccupied structure that is a component of the state highway system;

(ii) a privately owned structure that is located on property owned by a government entity; or

(iii) a structure that is located on land administered by the School and Institutional Trust

Lands Administration under a lease, permit, or contract with the School and Institutional Trust

Lands Administration.

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

63

Part 5. Charges for Private Events

63-55d-501. Calculation of charge to private person.

67 (1)(a) If a government entity permits a private person to use a public facility for a private
68 event, the government entity shall charge the private person an amount equal to or greater
69 than the amount calculated by:

70 (i) multiplying the daily square foot charge by the number of square feet that the private
71 person is permitted to use for the private event;

72 (ii) adding to the amount calculated under Subsection (1)(a)(i) the amount calculated under
73 Subsection (3); and

74 (iii) adding to the amount calculated under Subsection (1)(a)(ii), an amount calculated by
75 multiplying the amount calculated under Subsection (1)(a)(ii) by .10.

76 (b) Nothing in this part prevents a government entity from charging an amount greater than
77 the amount described in Subsection (1)(a).

78 (c) If a government entity decides to permit a private person to use a public facility for a
79 private event after a fiscal year begins, the government entity shall charge an amount equal
80 to or greater than the amount required by Subsection (1)(a), notwithstanding that the daily
81 square footage charge is determined on a fiscal year basis.

82 (2) For each fiscal year beginning on or after July 1, 2008, a government entity shall
83 calculate for a public facility that the government entity permits a private person to use for a
84 private event a daily square foot charge as follows:

85 (a) the government entity shall:

86 (i) determine the approximate value of the public facility as of the beginning of that fiscal
87 year;

88 (ii) multiply the approximate value of the public facility by .01;

89 (iii) divide the amount calculated under Subsection (2)(a)(ii) to determine an amount based
90 on one square foot; and

91 (iv) divide the amount calculated under Subsection (2)(a)(iii) by 365;

92 (b) the government entity shall:

93 (i) determine:

94 (A) the net revenue the government entity received for the use of the public facility by a

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

95 private person for a private event in the immediately preceding fiscal year; or
96 (B) if a private person did not use the public facility for a private event in the immediately
97 preceding fiscal year, determine an amount equal to the amount described in
98 Subsection (2)(c);
99 (ii) multiply the amount calculated under Subsection (2)(b)(i) by .05;
100 (iii) divide the amount calculated under Subsection (2)(b)(ii) to determine an amount based
101 on one square foot; and
102 (iv) divide the amount calculated under Subsection (2)(b)(iii) by the greater of:
103 (A) 12; or
104 (B) the number of private events held at the public facility in the immediately preceding fiscal
105 year;
106 (c)(i) the government shall prorate on the basis of the square footage of the public facility the
107 amount of the following costs of the public facility that is allocable to one square foot:
108 (A) a cost of general overhead, including:
109 (I) an administrative cost; or
110 (II) a cost for utilities;
111 (B) an operational cost;
112 (C) a maintenance cost; and
113 (D) a construction or other capital cost related to construction, acquiring, or improving the
114 public facility; and
115 (ii) divide the amount calculated under Subsection (2)(c)(i) by 365;
116 (d) the government entity shall:
117 (i) calculate the cost to the government entity generally associated with permitting a private
118 person to use the public facility for a private event;
119 (ii) calculate the amount a sales and use tax the government entity would have paid if the
120 government entity were required to by sales and use taxes under Title 59, Chapter 12, Sales
121 and Use Tax Act, for a purchase the government entity generally makes when permitting a
122 private person to use the public facility for a private event;
123 (iii) add the amounts calculated under Subsection (2)(d)(i) and (ii);
124 (iv) divide the amount calculated under Subsection (2)(d)(iii) to determine an amount based
125 on one square foot; and
126 (v) divide the amount calculated under Subsection (2)(d)(iv) by the greater of:

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

(A) 12; or

(B) the number of private events held at the public facility in the immediately preceding fiscal year; and

(e) add together the amounts calculated in Subsections (2)(a) through (d).

(3) Before entering into an agreement to permit a private person to use a public facility for a private event, a government entity shall determine the specific cost to the government entity, to the extent that the cost is not included in Subsection (2), for permitting the private person to use of the public facility for that private event.

63-55d-502. Collection of charge may not be reduced or forgiven – Condition of future use.

(1) A government entity may not reduce or otherwise permit a private person not to pay, in whole or in part, a charge required by this part.

(2) A government entity shall use reasonable efforts to collect a charge required by this part, including taking an action that the government entity takes to collect another debt owed the government entity.

(3) A private person may not use a public facility of a government entity if that private person owes a charge required by this part that the person has not paid to the government entity for a previous private event at a public facility of the government entity.

63-55d-503. Report charges to governor and Legislature.

A government entity shall annually report in writing to the governor and the Legislature, by no later than 90 days after the day on which a fiscal year ends:

(1) the daily square foot charge for a public facility that the government entity permits a private person to use for a private event in that fiscal year;

(2) the number of private events for which a public facility is used in that fiscal year;

(3) the type of private events for which a public facility is used in that fiscal year; and

(4) the gross revenue the government entity received for permitting a private person to use a public facility for a private event in the previous year.

63-55d-504. Valuation of property.

The county assessor in the county in which a public facility shall assess the approximate

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

value of a public facility in a manner consistent with how the county assessor assess the fair market value of other property in the county.

Part [5]6. Enforcement

63-55d-[504]601. Exemption from Administrative Procedures Act.

....

63-55d-[502]602. Initial process for a complaint.

....

63-55d-[503]603. Hearing – Costs – Termination of commercial activities.

(1)(a) The commission shall hold a hearing on the complaint filed under Section 63-55d-[502]602 if the government entity against which the complaint is filed:

(i) denies that it is or has violated this chapter; or

(ii) is determined by the commission to have failed to cooperate as required by Subsection 63-55d-[502]602(5).

(b) The commission shall hold a hearing required under this Subsection (1) within 60 days of the day on which:

(i) the commission receives the written denial of the complaint; or

(ii) the commission determines the government entity fails to cooperate as required by Subsection 63-55d-[502]602(5).

(c) A hearing conduct under this section is open to the public, unless the commission closes the hearing in accordance with Title 57, Chapter 4, Open and Public Meetings Act.

(2) At a hearing conducted under this section, the commission shall provide an opportunity to present evidence to:

(a) the complainant; and

(b) the government entity against which the complaint is filed.

(3)(a) Within 30 days after the hearing, the commission shall:

(i) issue an order; and

(ii) provide a copy of the order to:

(A) the complainant; and

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

191 (B) the government entity against which the complaint is filed.
192 (b) An order required by this section shall be in writing and state:
193 (i) whether or not the government entity is or has violated this chapter;
194 (ii) what action, if any, the government entity is required to take to remedy a violation of this
195 chapter;
196 (iii) if the complaint is made on the basis of ~~[the government entity engaging in a commercial~~
197 ~~activity]~~ a violation of Part 3, Government Competition Requirements, whether or not the
198 government entity is required to stop engaging in the commercial activity;
199 (iv) if the complaint is on the basis of a violation of Part 5, Charges for Private Events,
200 whether or not the government entity:
201 (A) is required to charge a different amount to allow for use of a public facility for private use;
202 or
203 (B) may allow for use of a public facility for a private event;
204 ~~[(iv)]~~(v) the time by which a government entity shall take an action required by the order; and
205 ~~[(v)]~~(vi) any other finding the commission determines is appropriate.
206 (c) The commission may, in an order required by this Subsection (3), require a government
207 entity to privatize a commercial activity that is the basis of the complaint.
208 (4) If the commission determines that a government entity against which a complaint is filed
209 does not or has not violated this chapter, the commission may require the complainant to pay
210 the lesser of:
211 (a) the costs incurred by the commission in reviewing the complaint and conducting the
212 hearing; and
213 (b) \$1,000.
214 (6) A complainant or government entity may appeal an action by the commission to a district
215 court in the same manner that an informal adjudicative proceeding is appealed under
216 Sections 63-46b-14, 63-46b-15, 63-46b-17, and 63-46b-18.

217

218 **63-55d-~~504~~604. Injunction.**

219

220

221 **63-55d-~~505~~605. Monitoring of compliance.**

222

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

223

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

INVENTORY AND REVIEW – INSERT

LONG TITLE

General Description:

This bill . . . including creating the Government Competition and Privatization Commission and the Government Competition and Privatization Council.

Highlighted Provisions:

This bill:

- ▶
- ▶ creates the Government Competition and Privatization Commission and the Government Competition and Privatization Council;
- ▶ establishes the duties of the commission, including rulemaking;
- ▶ establishes the duties of the council, including creating an inventory of activities of government entities;
- ▶
- ▶ imposes requirements for review of privatization; ~~[and]~~
- ▶ requires the governor to review certain commercial activities; and
- ▶

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

List of sections affected:

AMENDS:

ENACTS:

. . . .

63-55d-103

. . . .

63-55d-204

63-55d-205

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

31

32 [~~63-55d-505~~]

33 63-55d-601

34 63-55d-602

35 63-55d-603

36 63-55d-604

37 63-55d-605

38

39 Statutory text:

40 **CHAPTER 55d. GOVERNMENT COMPETITION AND PRIVATIZATION ACT**

41

42 **Part 1. General Provisions**

43

44

45 **63-55d-102. Definitions**

46 As used in this chapter:

47

48 (7) "Competitive program" means a program developed by the council in accordance with

49 Section 63-55d-204.

50 (10) "Council" means the Utah Government Competition and Privatization Council created in

51 Section 63-55d-202.

52

53 (12)(a) "Government entity employee" means a person:

54 (i) employed by a government entity to engage in an activity; or

55 (ii) engaged to perform work for or to provide an activity to a government entity.

56 (b) "Government entity employee" includes:

57 (i) a salaried employee; and

58 (ii) a wage employee.

59

60 (17) "Public or private performance analysis" means an analysis meeting the requirements of

61 Section 63-55d-505.

62

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

63-55d-103. Exemptions.

Part 5, Commercial Activities Inventory and Review, does not apply to a transportation-related project initiated pursuant to Title 72, Transportation Code.

Part 2. Government Competition and Privatization Commission and Council

....

63-55d-202. Government Competition and Privatization Council created.

(1) There is created the Government Competition and Privatization Council consisting of 15 members appointed as follows:

(a) the governor shall appoint:

(i) four government entity employees in the executive branch of a government entity; and

(ii) three members to represent a private enterprise;

(b) the Speaker of the House of Representatives shall appoint:

(i) two members of the House of Representatives; and

(ii) two members to represent a private enterprise; and

(c) the President of the Senate shall appoint:

(i) two members of the Senate; and

(ii) two members to represent a private enterprise.

(2)(a) Except as required by Subsection (2)(b), a council member shall serve until the sooner of:

(i) the expiration of a four-year term; or

(ii) the day on which the council member no longer holds the position required to be appointed under Subsection (1).

(b) A member of the council who is not a legislative member may not serve more than two consecutive terms. The remainder of a term to which a council member is appointed to fill a vacancy does not constitute a term in determining the council member's eligibility for reappointment.

(c) The governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of the council members are staggered so that approximately half of the council is appointed every two years.

(d) A council member shall serve until a successor is appointed.

(e) When a vacancy occurs in the membership of the council for any reason, the appointing

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

authority shall appoint a replacement to the unexpired term in a manner consistent with Subsection (1).

(3) By no later than July 31 each year the council shall select one of its members to serve as chair of the council for a one-year term.

(4) The council shall meet as scheduled by the chair, except that the chair shall schedule a meeting at least quarterly.

(5)(a) Eight members of the council constitute a quorum of the council.

(b) An action of the council requires that:

(i) a quorum be present; and

(ii) a majority of the council members that are present vote for the action.

(6) (a) (i) A council member who is not a government employee may not receive compensation or benefits for the council member's service, but may receive per diem and expenses incurred in the performance of the council member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) A council member who is not a government employee may decline to receive per diem and expenses for the council member's service.

(b) (i) A state government officer or employee council member who does not receive salary, per diem, or expenses from the council member's agency for the council member's service may receive per diem and expenses incurred in the performance of the council member's official duties from the council at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) A state government officer or employee council member may decline to receive per diem and expenses for the council member's service.

(c) (i) A local government council member who does not receive salary, per diem, or expenses from the entity that the council member represents for the council member's service may receive per diem and expenses incurred in the performance of the council member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) A local government council member may decline to receive per diem and expenses for the member's service.

(c) A legislator on the council shall receive compensation and expenses as provided by statute and legislative rule.

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

127 (7) The department shall staff the council.

128

129 **63-55d-[202]203. Commission duties.**

130 (1) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
131 commission shall make rules to:

132 (a) define:

133 (i) "byproduct of a commercial activity"; and

134 (ii) "ordinary business channel";

135 (b) establish a commission accounting method in accordance with Section 63-55d-203;

136 (c) establish a procedure for preparing competitive impact statements that is:

137 (i) consistent with Section 63-55d-302; and

138 (ii) provides a process for issuing a request for proposals:

139 (A) to ensure that the request for proposals is distributed widely; and

140 (B) that is consistent with Title 63, Chapter 55, Utah Procurement Act;

141 (d) establish a procedure for an institution of higher education requesting an approval of the
142 commission under Section 63-55d-303;

143 (e) establish one or more standards to recommend privatization of an activity of a
144 government entity in accordance with Part 4, Privatization Requirements; ~~and~~

145 (f) establish processes required to carry out the functions of the council under Part 5,

146 Competitive Activities Inventory and Review; and

147 ~~[f]~~ (g) establish a procedure for a person to file a complaint that is consistent with Part ~~[5]~~ (6),
148 Enforcement.

149 (2) The commission shall comply with Part 3, Government Competition Requirements:

150 (a) to review or approve a commercial activity of a government entity; and

151 (b) to review or approve a commercial activity of an institutional of higher education, including
152 a charge for the sale of a byproduct of a commercial activity.

153 (3) The commission shall comply with Part 4, Privatization Requirements, to review
154 privatization of an activity of a government entity;

155 (4) The commission shall comply with Part ~~[5]~~ (6), Enforcement, if a complaint is filed with the
156 commission in accordance with Section 63-55d-~~[502]~~602.

157 (5) The commission shall communicate with private or public entities that address
158 government competition with a private enterprise or privatization; and

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

- 159 (6)(a) The commission shall prepare an annual report that:
- 160 (i) describes the commission's activities, including the commission's actions with respect to a
- 161 complaint filed under Section 63-55d-~~502~~602; and
- 162 (ii) makes recommendations, including the need for legislation, if any, to address an activity
- 163 of a government entity that the commission finds:
- 164 (A) is in competition with a private enterprise; or
- 165 (B) should be privatized;
- 166 (b) submit the annual report by no later than December 1 to the Legislature and the governor; and
- 167 (d) if the annual report includes a recommendation described in Subsection(6)(b)(ii)
- 168 regarding a government entity, file a copy of the recommendation with:
- 169 (i) the chief administrative officer of the government entity that is the subject of the
- 170 recommendation; and
- 171 (iii) the Office of Legislative Fiscal Analyst, for submission to the legislative appropriation
- 172 subcommittee that has responsibility related to that government entity.

173

174 **63-55d-204. Council duties**

- 175 (1) The council is an advisory committee that advises the commission regarding methods of
- 176 providing a portion or all of a commercial activity by a private enterprise.
- 177 (2) The council shall:
- 178 (a) comply with Part 5, Competitive Activities Inventory and Review, to create the required
- 179 inventory;
- 180 (b) develop an institutional framework for a statewide competitive program to encourage
- 181 innovation and competition within government entities;
- 182 (c) establish a system to encourage the use of feasibility studies and innovation to determine
- 183 where competition could reduce government costs without harming the public;
- 184 (d) advocate, develop, and accelerate implementation of a competitive program for a
- 185 government entity to ensure competition for a commercial activity;
- 186 (e) assist the commission in determining the privatization potential of a commercial activity,
- 187 including performing an analysis of cost and benefit of privatization;
- 188 (f) review the procurement process under Title 63, Chapter 56, Utah Procurement Code, and
- 189 make recommendations for:
- 190 (i) improving the use and efficiency of the process;

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

191 (ii) releasing information to the public during all stages of the process; and
192 (iii) ensuring accountability on the part of public officials and employees involved in the
193 process;

194 (g) develop proposals for:

195 (i) preserving the traditional role of a private enterprise; and

196 (ii) encouraging the expansion of existing, and the creation of new, private enterprises; and

197 (h) review the practices of a nonprofit organization that may constitute inappropriate
198 competition with a private enterprise.

199 (3)(a) The council may apply for, accept, and expend a gift, grant, or donation from a public
200 or private source to enable the council to better carry out its objectives.

201 (b) A person who provides a gift, grant, or donation to the council is not eligible for a contract
202 award that results from action of a council recommendation.

203 (4) The council may not impose an unreasonable burden or cost in connection with a
204 request of a government entity.

205 (5) The council shall annually by November 1 report its findings and recommendations to the
206 commission.

207

208 **63-55d-[203]205. Commission accounting method**

209 The commission by rule made in accordance with Title 63, Chapter 46a, Utah Administrative
210 Rulemaking Act, shall establish an accounting method that:

211 (1) is similar to generally accepted accounting principles used by a private enterprise;

212 (2) allows a government entity to identify the total actual cost of engaging in a commercial
213 activity in a manner similar to how a private enterprise identifies the total actual cost to the
214 private enterprise, including the following:

215 (a) a labor expense, such as:

216 (i) compensation and benefits;

217 (ii) a cost of training;

218 (iii) a cost of paying overtime;

219 (iv) a cost of supervising labor; or

220 (v) another personnel expense;

221 (b) an operating cost, such as:

222 (i) vehicle maintenance and repair;

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

- 223 (ii) a marketing, advertising, or other sales expense;
224 (iii) an office expense;
225 (iv) a cost of an accounting operation, such as billing;
226 (v) an insurance expense;
227 (vi) a real estate or equipment cost;
228 (vii) a debt service cost; or
229 (viii) a proportionate amount of other overhead or of a capital expense, such as vehicle
230 depreciation and depreciation of other fixed assets;
231 (c) a contract management cost; and
232 (d) another cost particular to a person supplying the good or service;
233 (3) provides a process to estimate the taxes a government entity would pay related to
234 engaging in a commercial activity if the government entity were required to pay federal, state,
235 and local taxes to the same extent as a private enterprise engaging in the commercial
236 activity; ~~and~~
237 (4) allows an institution of higher education to calculate the market price of the sale of a
238 byproduct of a commercial activity as described in Subsection 63-55d-303(4); and
239 (5) is to be used by the council in the council's activities under this chapter.

240

Part 5. Commercial Activities Inventory and Review

63-55d-501. Council to create inventory

- 244 (1) By no later than June 30, 2009, the council shall create an inventory of activities of a
245 government entity in this state to classify whether the activity is:
246 (a) a commercial activity;
247 (b) an inherently governmental activity; or
248 (c) neither a commercial activity or inherently governmental activity.
249 (2) The council shall update the inventory created under this section at least every two years.
250 (3) The council shall:
251 (a) provide a copy to the commission of the inventory and an update to the inventory; and
252 (b) make the inventory available to the public through electronic means.

253

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

63-55d-502. Governor to require review of commercial activities.

(1) Beginning with fiscal year 2009-2010, the governor shall at least once every two fiscal years:

(a) select at least three commercial activities that are being performed by a government entity employee at a government entity for examination; and

(b) (i) require the Governor's Office of Planning and Budget to conduct the examination; or

(ii) contract in accordance with Chapter 56, Utah Procurement Code with a private enterprise to conduct the examination.

(2) The governor may require that an executive branch state agency that is engaged in a commercial activity contract with a private enterprise for the commercial activity in accordance with Chapter 56, Utah Procurement Code, if the governor determines that contracting for the commercial activity:

(a) may result in a reduced cost or otherwise provide a measurable benefit to the state; and

(b) assure that the commercial activity is accomplished in the most cost efficient and effective manner.

63-55d-503. Unsolicited proposals

(1) After receiving a notice required by Subsection (2), the governor may direct an executive branch state agency to perform a public or private performance analysis covering a commercial activity for which the commission or council receives a proposal that:

(a) meets the qualifications for the commercial activity;

(b) is unsolicited;

(c) is from a private enterprise; and

(d) is consistent with Part 2, Government Competition and Privatization Commission and Council.

(2) The commission or council shall notify the governor and Legislature within 30 days of the day on which the commission or council determines that it has received a proposal meeting the requirements of Subsection (1).

(3) To conduct a public or private performance analysis an executive branch state agency shall use the procurement methods of Chapter 56, Utah Procurement Code, to solicit proposals and bids from one or more private enterprises to make cost comparison decisions.

(4) The council shall explore methods to encourage a government entity to compete for a

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

286 contract.

287

288 **63-55d-504. Duties of the Governor's Office of Planning and Budget**

289 (1) The Governor's Office of Planning and Budget shall:

290 (a) determine the amount of an appropriation that is no longer needed by an executive
291 branch state agency because all or a portion of the executive branch state agency's function
292 is privatized; and

293 (b) adjust the governor's budget recommendations to reflect the amount determined under
294 Subsection (1)(a).

295 (2) The Governor's Office of Planning and Budget shall ensure that the governor meet a
296 reporting requirement under this chapter.

297 (3) This section does not prevent the governor from recommending in a budget
298 recommendation the restoration of a portion of the appropriation to an executive branch state
299 agency reduced under this section.

300

301 **Part [5]6. Enforcement**

302

303 **63-55d-[504]601. Exemption from Administrative Procedures Act.**

304

305

306 **63-55d-[502]602. Initial process for a complaint.**

307

308

309 **63-55d-[503]603. Hearing – Costs – Termination of commercial activities.**

310

311

312 **63-55d-[504]604. Injunction.**

313

314

315 **63-55d-[505]605. Monitoring of compliance.**

316

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

ACCOUNTING FOR COMPETITIVE ACTIVITIES OF LOCAL ENTITIES

LONG TITLE

General Description:

This bill modifies provisions of the Uniform Fiscal Procedures Acts applicable to specified local entities to address accounting for competitive activities.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires a county, city, or local district to account for a competitive activity in a separate fund or in a program budget;
- ▶ requires annual reviews to determine whether an activity is a competitive activity; and
- ▶ allows for the withholding of state funds for violations.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2008 and applies to the first budget year that begins on or after July 1, 2008.

List of sections affected:

ENACTS:

10-6-108.5

17-36-6.5

17B-1-604.5

Statutory text:

10-6-108.5. Accounting for a competitive activity.

(1) As used in this section:

(a) "Competitive activity" means an activity engaged in by a city or an entity created by the city:

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

- 32 (i) that is not a core governmental activity; and
33 (ii) by which the city or an entity created by the city provides a good or service that is
34 substantially similar to a good or service that is:
35 (A) provided by a person who is not an entity of the federal government, state government, or
36 a political subdivision of the state; and
37 (B) provided within:
38 (I) the boundary of the city; or
39 (II) 30 miles of the boundary of the city.
40 (b) "Core governmental activity" means:
41 (i) a legislative activity of the legislative body of the city; or
42 (ii) a regulatory activity of the executive of a city.
43 (c)(i) Subject to Subsection (1)(c)(ii), "entity created by the city" includes:
44 (A) an entity created by a interlocal agreement under Title 11, Chapter 13, Interlocal
45 Cooperation Act, in which the city participates; and
46 (B) a special service district created under Title 17A, Chapter 2, Part 13, Utah Special
47 Service District Act.
48 (ii) "Entity created by the city" does not include a local district created by a city under
49 Title 17B -- Limited Purpose Local Government Entities - Local Districts.
50 (d)(i) "Separate fund" means an independent fiscal and accounting entity that is a
51 self-balancing set of accounts:
52 (A) recording:
53 (I) cash and other financial resources;
54 (II) related liabilities and residual equities;
55 (III) balances; and
56 (IV) changes in the set of accounts; and
57 (B) that is segregated from other funds.
58 (ii) "Separate fund" includes an enterprise fund.
59 (2)(a) A city shall account for a competitive activity of the city using a separate fund
60 beginning on the first day of the fiscal year immediately following the day on which the
61 activity becomes a competitive activity.
62 (b) A separate fund created in accordance with this section is subject to the same budget
63 requirements as a budgetary fund.

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

(3) The legislative body of a city shall annually review the one or more activities of the city or of an entity created by the city to determine if an activity is a competitive activity including determining if an activity is substantially similar to an activity described in Subsection (1)(a)(ii).

(4) Notwithstanding the other provisions of this section, a city may account for a competitive activity using a program budget, as described in the Uniform Accounting Manual for Utah Cities created by the State Auditor, if the legislative body of the city determines that the program budget provides the same independent fiscal and accounting as would a separate fund.

(5) A city is subject to the withholding of state money in accordance with Section 10-6-104 if the city violates this section.

17-36-6.5. Accounting for a competitive activity.

(1) As used in this section:

(a) "Competitive activity" means an activity engaged in by a county or an entity created by the county:

(i) that is not a core governmental activity; and

(ii) by which the county or an entity created by the county provides a good or service that is substantially similar to a good or service that is:

(A) provided by a person who is not an entity of the federal government, state government, or a political subdivision of the state; and

(B) provided within:

(I) the boundary of the county; or

(II) 30 miles of the boundary of the county.

(b) "Core governmental activity" means:

(i) a legislative activity of the legislative body of the county; or

(ii) a regulatory activity of the executive of a county.

(c)(i) Subject to Subsection (1)(c)(ii), "entity created by the county" includes:

(A) an entity created by a interlocal agreement under Title 11, Chapter 13, Interlocal Cooperation Act, in which the county participates; and

(B) a special service district created under Title 17A, Chapter 2, Part 13, Utah Special Service District Act.

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

(ii) "Entity created by the county" does not include a local district created by a county under Title 17B -- Limited Purpose Local Government Entities - Local Districts.

(d)(i) "Separate fund" means an independent fiscal and accounting entity that is a self-balancing set of accounts:

(A) recording:

(I) cash and other financial resources;

(II) related liabilities and residual equities;

(III) balances; and

(IV) changes in the set of accounts; and

(B) that is segregated from other funds.

(ii) "Separate fund" includes an enterprise fund.

(2)(a) A county shall account for a competitive activity of the county using a separate fund beginning on the first day of the fiscal year immediately following the day on which the activity becomes a competitive activity.

(b) A separate fund created in accordance with this section is subject to the same budget requirements as a budgetary fund.

(3) The legislative body of a county shall annually review the one or more activities of the county or of an entity created by the county to determine if an activity is a competitive activity including determining if an activity is substantially similar to an activity described in Subsection (1)(a)(ii).

(4) Notwithstanding the other provisions of this section, a county may account for a competitive activity using a program budget, as described in the Uniform Accounting Manual for Utah Counties created by the State Auditor, if the legislative body of the county determines that the program budget provides the same independent fiscal and accounting as would a separate fund.

(5)(a) The state auditor may withhold state money allocated to a county for its failure to comply with this section.

(b) Within 30 days of the day on which a county complies with this section, the state auditor shall distribute the money withheld under this Subsection (5) to the county.

17B-1-604.5 Accounting for a competitive activity.

(1) As used in this section:

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

128 (a) "Competitive activity" means an activity engaged in by a local district or an entity created
129 by the local district:

130 (i) that is not a core governmental activity; and

131 (ii) by which the local district or an entity created by the local district provides a good or
132 service that is substantially similar to a good or service:

133 (A) provided by a person who is not an entity of the federal government, state government, or
134 a political subdivision of the state; and

135 (B) provided within:

136 (I) the boundary of the local district; or

137 (II) 30 miles of the boundary of the local district.

138 (b) "Core governmental activity" means:

139 (i) a legislative activity of the legislative body of the local district; or

140 (ii) a regulatory activity of the executive of a local district.

141 (c) "Entity created by the local district" includes an entity created by a interlocal agreement
142 under Title 11, Chapter 13, Interlocal Cooperation Act, in which the local district participates.

143 (d)(i) "Separate fund" means an independent fiscal and accounting entity that is a
144 self-balancing set of accounts:

145 (A) recording:

146 (I) cash and other financial resources;

147 (II) related liabilities and residual equities;

148 (III) balances; and

149 (IV) changes in the set of accounts; and

150 (B) that is segregated from other funds.

151 (ii) "Separate fund" includes an enterprise fund.

152 (2)(a) A local district shall account for a competitive activity of the local district using a

153 separate fund beginning on the first day of the fiscal year immediately following the day on
154 which the activity becomes a competitive activity.

155 (b) A separate fund created in accordance with this section is subject to the same budget
156 requirements as a budgetary fund.

157 (3) The board of trustees of a local district shall annually review the one or more activities of
158 the local district or of an entity created by the local district to determine if an activity is a

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

159 competitive activity including determining if an activity is substantially similar to an activity
160 described in Subsection (1)(a)(ii).

161 (4) Notwithstanding the other provisions of this section, a local district may account for a
162 competitive activity using a program budget, as described in the Uniform Accounting Manual
163 for Utah Local Districts created by the State Auditor, if the board of trustees of the local
164 district determines that the program budget provides the same independent fiscal and
165 accounting as would a separate fund.

166 (5) (a) The state auditor may withhold state money allocated to a local district for its failure
167 to comply with this section.

168 (b) Within 30 days of the day on which a local district complies with this section, the state
169 auditor shall distribute the money withheld under this Subsection (5) to the local district.

170

171 **Section. X. Effective date.**

172 This bill takes effect on July 1, 2008 and applies to the first budget year that begins on or
173 after July 1, 2008.